

VIRGINIA DEPARTMENT OF GAME AND INLAND FISHERIES

**SUBJECT: APPEALS AND PROCEEDINGS REGARDING DENIAL,
SUSPENSION, REVOCATION, AND REINSTATEMENT OF
SCIENTIFIC COLLECTION, WILDLIFE SALVAGE, AND
THREATENED/ENDANGERED SPECIES PERMITS**

EFFECTIVE: September 5, 2008

Introduction

Under authority granted to the Board of Game and Inland Fisheries in §29.1-103 of the Code of Virginia, the Board conveyed authority to the Director, via 4 VAC 15-30-5, to set permit schedules, establish permit conditions, delegate signature authority, establish protocols for responding to permit decision appeals, and render final permit decisions. The Director also has the authority to establish a policy on the issuance of new permits to individuals whose previous permits or applications have been revoked or denied for infractions of wildlife laws, regulations, or conditions.

Definitions

As described in §§29.1-412, 29.1-418, and 29.1-569 of the Code of Virginia, a “*Permit*” may be issued for specific purposes outlined below, including:

- Threatened/Endangered Species Permit (Code of Virginia §29.1-568): For the taking, exportation, transportation, or possession of listed fish or wildlife for zoological, educational, or scientific purposes or for captive propagation of the species for preservation purposes.
- Scientific Collection Permit (Code of Virginia §29.1-418): For the collection, including capture and release, of wildlife for scientific or museum purposes when the collection is an essential part of a specific research project.
- Wildlife Salvage Permit (Code of Virginia §29.1-418): Issued as a category of Scientific Collection Permit, for the collection of animals found dead or parts thereof for scientific or museum purposes when the collection is an essential part of a specific research project.

“*Department*” means the Virginia Department of Game and Inland Fisheries.

“*Director*” means the Director of the Virginia Department of Game and Inland Fisheries, or his/her designee.

“*Permittee*” includes any individual, firm, corporation, association, partnership, or other entity listed as the Permittee on any Scientific Collection, Wildlife Salvage, or Threatened/Endangered Species permit.

“*Principal Applicant*” includes any individual, firm, corporation, association, partnership, or other entity listed as the Principal Applicant to obtain a Scientific Collection, Wildlife Salvage, or Threatened/Endangered Species permit.

“*Sub-permittee*” includes any individual, firm, corporation, association, partnership, or other entity listed as a Sub-permittee on any Scientific Collection, Wildlife Salvage, or Threatened/Endangered Species permit, or on any application for such permit.

Permit issuance, denial, suspension, or revocation

Pursuant to 4 VAC 15-30-5, issuance of all permits is at the discretion of the Director. The Director may deny a permit application, or suspend or revoke an existing permit, by written notification to the Principal Applicant or Permittee, on any of the following grounds:

1. Incomplete or inaccurate completion of the application forms; or unauthorized, inadequate, unsubstantiated, or false justification for the requested permit.
2. Provision of false or incomplete information in subsequent reports submitted in compliance with permit terms and conditions.
3. Use of unapproved or improperly executed sampling methods or techniques.
4. Conviction of any criminal act in connection with state or federal wildlife laws or regulations relating to the permit being sought.
5. Non-compliance with the terms, requirements, or limitations of the issued permit.
6. Failure to comply with any provision of a signed Corrective Action Plan.

Such denial, suspension, or revocation shall remain in effect until the Permittee documents compliance with the terms and conditions of any applicable permits, completes any remediation or mitigation required to address such violations, and serves any applicable suspension/revocation term. Determination of compliance with these requirements is at the sole discretion of the Director.

Any Principal Applicant or Permittee (but not Sub-permittees) may appeal the denial of a permit application or the suspension or revocation of a permit by filing a written request to the Director within 30 days of notification of said permit denial, suspension, or revocation. Within 10 business days of receipt of such an appeal, the Department shall respond to the appeal by initiating informal consultation as described below, or shall provide to the Principal Applicant or Permittee a Notice of Informal Fact Finding Proceeding detailing the time and place for review of the appeal, and a copy of the Department's appeal policy and procedures. If the permit, application, or regulated activity is the subject of an ongoing criminal investigation, or if an ongoing criminal investigation provided grounds for the subject permit revocation or suspension, no administrative appeal shall be considered pending conclusion of said criminal investigations and proceedings. An Informal Fact Finding Proceeding may be granted, if appropriate, upon conclusion of such criminal investigations and proceedings.

Review and investigation of complaints against Scientific Collection, Wildlife Salvage, or Threatened/Endangered Species permit applicants and permittees

The Director shall investigate relevant complaints against permit applicants, permittees, or sub-permittees reported to the Department by internal or external sources. These investigations shall be conducted as determined appropriate by the Director, and conclude with the Director's decision to:

1. Deny a permit application, or suspend or revoke an existing permit, if the investigation documents grounds for such action as provided under *Permit Issuance, Denial, Suspension, or Revocation*, items 1-6; or
2. Close the investigation and, if appropriate, reinstitute the subject permit(s) when, in the opinion of the Director, the investigation did not confirm grounds for denial of a permit

application, or for suspension or revocation of an existing permit. Receipt by the Department of new and relevant information or evidence may constitute cause for reopening of such investigation; or

3. Continue the Department's investigation of the allegations and complaints; or
4. Close the investigation and, if appropriate, reinstitute the subject permit(s) when, in the opinion of the Director, the basis of the complaint and allegations has been resolved, and appropriate actions are being implemented; or
5. Forward the documentation and conclusions of the investigation for consideration via informal consultation or informal fact finding proceeding.

Informal consultation

At his discretion, the Director may initiate informal consultation to address compliance issues regarding permit application requirements, and permit terms and conditions. Informal compliance measures would thus be negotiated via discussions or written correspondence between Department staff and the Permittee or Principal Applicant. Compliance measures developed through informal consultation shall be documented as a Corrective Action Plan and incorporated as terms or conditions for any permits issued, suspended, revoked, or reinstituted via this process. If permit-related issues cannot be resolved through informal consultation, the Director may provide to the Principal Applicant or Permittee a Notice of Informal Fact Finding Proceeding as described above, and a copy of the Department's appeal policy and procedures.

Informal Fact Finding Proceeding

Informal Fact Finding Proceedings will be conducted by a panel of three Department Division Directors or Assistant Directors from Wildlife, Wildlife Diversity, Fisheries, Administrative Services, and Law Enforcement divisions. If the proceeding is initiated by appeal, the panel will not include a representative from the Division responsible for permit issuance. Further, if the proceeding is to address issues under criminal investigation or resulting from criminal charges or prosecution, no representative from Law Enforcement division will serve on the panel. The panel will hear and accept documentary evidence from the Principal Applicant, Permittee, Sub-permittees, and representatives thereof; from the complainants and representatives thereof; and from Department staff knowledgeable of the issues under consideration. This proceeding will be considered, if appropriate, only upon the conclusion of any criminal investigations and proceedings regarding the appeal.

Within 10 working days of conclusion of the informal fact finding proceeding, the panel will forward a written summary of the proceeding and recommendations to the Director. This may include testimony of witnesses, exhibits, or proffers extended during the proceeding. Within 30 working days of receipt of that written record, the Director shall:

1. Issue a final ruling to deny the permit application, or suspend or revoke an existing permit on evidence of grounds for such action as provided under ***Permit Issuance, Denial, Suspension, or Revocation***, items 1-6; or
2. Issue a final ruling to issue or reinstitute the subject permit(s) with appropriate conditions when, in the opinion of the Director, the informal fact finding proceeding did not confirm grounds for denial of the permit application, or for suspension or revocation of an existing permit; or

3. Issue a final ruling to close the investigation and, if appropriate, reinstitute the subject permit(s) when, in the opinion of the Director, the issues addressed through the informal fact finding proceedings have been resolved, and appropriate actions are being implemented.

Corrective Action Plan

A Corrective Action Plan is a written agreement between the Department and the Principal Applicant or Permittee that details the corrective actions to be taken in response to documented violations of permit terms or conditions. At any time prior to issuance of a final ruling, the Department, Principal Applicant, or Permittee may offer a Corrective Action Plan, which may be discussed, accepted, modified, or rejected by the parties during any subsequent informal consultation or informal fact finding proceeding. A Corrective Action Plan once agreed to and adopted in writing by the Principle Applicant or Permittee must be incorporated into the terms and conditions of any related permits or rulings regarding permits or applications.

Duration of permit denials, suspensions, and revocations

Pursuant to 4 VAC 15-30-5, the Director is authorized to establish a policy on the issuance of new permits to individuals whose previous permits or applications have been revoked or denied for infractions of wildlife laws, regulations, or permit conditions.

When a Scientific Collection, Wildlife Salvage, or Threatened/Endangered Species permit application is denied, or a permit is suspended or revoked, the following periods apply:

- Permit application denials shall be for a period of at least six months and will not exceed twelve months;
- Permit suspensions shall be for a period of one to twelve months, as determined by the Director; and
- Permit revocations shall be for a period of not less than one year and will not exceed three years as determined by the Director.

Permit reapplication

A Principal Applicant or Permittee, may reapply or request reinstatement of a Scientific Collection, Wildlife Salvage, or Threatened/Endangered Species permit only after passage of the applicable period specified above in ***Duration of permit denials, suspensions, and revocations***. The Principle Applicant or Permittee must satisfy all of the requirements, terms, and conditions of any applicable final ruling and Corrective Action Plan. If the originally-issued permit is still valid, the Department may, at the Director's discretion, reinstitute the permit by letter of authorization to the Permittee. If the permit would have expired had it not been suspended or revoked, the applicant must reinitiate the normal permit application process as outlined on the Department's website at: <http://www.dgif.virginia.gov/>.

Approved:

Robert W. Duncan, Executive Director

Date